

PCT

NOTIFICATION OF TRANSMITTAL  
OF COPIES OF TRANSLATION  
OF THE INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT

(PCT Rule 72.2)

From the INTERNATIONAL BUREAU

To:

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Osaka-shi, Osaka 530-0047  
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Date of mailing (day/month/year) 17 February 2005 (17.02.2005)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference P2-03T01141	
International application No. PCT/JP2003/009617	International filing date (day/month/year) 29 July 2003 (29.07.2003)
Applicant TOYO SHINYAKU CO., LTD. et al	

1. Transmittal of the translation to the applicant.

The International Bureau transmits herewith a copy of the English translation made by the International Bureau of the international preliminary examination report established by the International Preliminary Examining Authority.

2. Transmittal of the copy of the translation to the elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following elected Offices requiring such translation:

AZ, CA, CH, CN, CO, EP, GH, KG, KP, KR, MK, MZ, RO, RU, TM

The following elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, BA, BB, BG, BR, BY, BZ, CR, CU, CZ, DE, DK, DM, DZ, EA, EC, EE, ES, FI, GB, GD, GE, GM, HR, HU, ID, IL, IN, IS, KE, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MN, MW, MX, NI, NO, NZ, OA, OM, PG, PH, PL, PT, SC, SD, SE, SG, SK, SL, SY, TJ, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report.

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO  
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Translation

PATENT COOPERATION TREATY

PCT/JP2003/009617



# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P2-03T01141	<b>FOR FURTHER ACTION</b> See Form PCT/IPEA/416	
International application No. PCT/JP2003/009617	International filing date ( <i>day/month/year</i> ) 29 July 2003 (29.07.2003)	Priority date ( <i>day/month/year</i> ) 29 July 2002 (29.07.2002)
International Patent Classification (IPC) or national classification and IPC A61K 31/352, 31/375, A61P 9/00, 43/00, C07D 311/62, A23L 1/30, 1/302, 2/00, A23F 3/14		
Applicant TOYO SHINYAKU CO., LTD.		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising: a. <input type="checkbox"/> ( <i>sent to the applicant and to the International Bureau</i> ) a total of _____ sheets, as follows: <div style="margin-left: 40px;"><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</div> b. <input type="checkbox"/> ( <i>sent to the International Bureau only</i> ) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items: <div style="margin-left: 20px;"><input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input checked="" type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input checked="" type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application</div>

Date of submission of the demand 19 February 2004 (19.02.2004)	Date of completion of this report 10 June 2004 (10.06.2004)
Name and mailing address of the IPEA/JP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2003/009617

## Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- ☐ This report is based on translations from the original language into the following language \_\_\_\_\_, which is language of a translation furnished for the purpose of:
- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

- ☒ The international application as originally filed/furnished
- ☐ the description:
- pages \_\_\_\_\_, as originally filed/furnished
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ the claims:
- pages \_\_\_\_\_, as originally filed/furnished
- pages\* \_\_\_\_\_, as amended (together with any statement) under Article 19
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ the drawings:
- pages \_\_\_\_\_, as originally filed/furnished
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP03/09617

Box No. IV Lack of unity of invention

1. ☐ In response to the invitation to restrict or pay additional fees the applicant has:

- ☐ restricted the claims.
- ☐ paid additional fees.
- ☐ paid additional fees under protest.
- ☐ neither restricted nor paid additional fees.

2. ☒ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

- ☐ complied with.
- ☒ not complied with for the following reasons:

Claims 1-4 and 9 concern a composition for improving blood flow having proanthrocyanidine as the active ingredient.

Claims 5-8 concern beverages containing ascorbic acid or a derivative thereof.

4. Consequently, this report has been established in respect of the following parts of the international application:

- ☒ all parts.
- ☐ the parts relating to claims Nos. \_\_\_\_\_

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claim	3	YES
	Claims	1, 2, 4-9	NO
Inventive step (IS)	Claims		YES
	Claims	1-9	NO
Industrial applicability (IA)	Claims		YES
	Claims	1-9	NO

## 2. Citations and explanations (Rule 70.7)

Document 1. EP 694305 A1

Document 2. Satoshi TAKAGI, "Icho Ha Extract on Tokusei to Riyo," New Food Industry, 1998, Vol. 40, No.5, pp. 1-7

Document 3. EP 1013278 A1

Document 4. EP 1086693 A1

Document 5. EP 1135995 A2

Document 6. EP 713706 A2

Document 7. JP 2002-29953 A

Document 8. EP 815857 A1

Document 9. SHUMEJKO, Pavel et al., THE EFFECT OF SIMULATED ACID RAIN ON THE BIOCHEMICAL COMPOSITION OF SCOTS PINE (PINUS SYLVESTRIS L.) NEEDLES, Environmental Pollution, 1996, Vol. 92, No.3, pp. 315-321

Document 10. NYMAN, Bengt F., PROTEIN-PROANTHOCYANIDIN INTERACTIONS DURING EXTRACTION OF SCOTS PINE NEEDLES, Phytochemistry, 1985, Vol. 24, No. 12, pp. 2939-2944

Documents 1-3 cited in the international search report describe the inventions of claims 1 and 2, and therefore these inventions lack novelty and an inventive step. The full text of document 1 describes a medicine for the treatment of peripheral diseases, etc., associated with arterial or venous circulatory disorders that contains proanthocyanidine dimers and oligomers, and because the kind of medicine for improving blood circulation in this application is also included in medicines for the above diseases, the inventions of claims 1 and 2 are the one and the same as the inventions of documents 1-3. The full text of document 2 states that ginkgo biloba leaf extract containing proanthocyanidine improves blood flow. Moreover, the full text of document states that pine needle extract improves blood flow, and as described in documents 9 and 10, because pine needle extract contains proanthocyanidine, the inventions of claims 1 and 2 are one and the same as the invention described in document 3.

Document 1 cited in the international search report describes the invention of claim 4, and therefore this invention lacks novelty and an inventive step.

Documents 4-8 cited in the international search report describe the inventions of claims 5-7 and 9, and therefore these inventions lack novelty and an inventive step. The full text of documents 4 and 5, Example 9 of document 6, Example 8 of document 7, and Example 7 of document 8 describe beverages that contain proanthocyanidine and ascorbic acid.

## Box No. VI Certain documents cited

## 1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
JP 2003-95968 A [EX]	03.04.2003	27.09.2001	
JP 2003-128560 A [EX]	08.05.2003	23.10.2001	
JP 2003-284525 A [EX]	07.10.2003	12.12.2002	19.12.2001

## 2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)

**Supplemental Box**

In case the space in any of the preceding boxes is not sufficient.  
Continuation of Box V. 2:

Document 6 cited in the international search report describes the invention of claim 8, and therefore this invention lacks novelty and an inventive step. Example 9 of document 6 describes a tea beverage that contains proanthocyanidine and ascorbic acid.

None of the documents cited in the international search report describes the invention of claim 3, and therefore this invention is novel.

Based on the descriptions in documents 1-5 cited in the international search report, the invention of claim 3 lacks an inventive step. The invention of claim 3 concerns a beverage that contains ascorbic acid and is not described in documents 1-3. However, because documents 4 and 5 describe the use of ascorbic acid as an additive in medicine, persons skilled in the art can easily conceive of using the ascorbic acid described in documents 4 and 5 as an additive in the medicine described in documents 1-3.